IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE C.V. RAMULU

WRIT PETITION No.17017 of 2002

Between:

Gullapudi Someswara Rao S/o Satyanarayana Murthy
aged about 49 years, R/o Tadepalli Gudem,

West Godavari Dist.

..... PETITIONER

AND

1) The Commissioner of Commercial Taxes
Government of Andhra Pradesh, Hyderabad.

2) The District Commercial Tax Officer
West Godavari, Eluru.

3) The Commercial Tax Officer
Tadepalli Gudem, West Godavari Dist.

4) Gullapudi Nageswara Rao S/o Someswara Rao
aged about 27 years, Business, R/o Subbaraopet,
Tadepalligudem, West Godavari District.
West Godavari Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or direction declaring the Proceedings of the 3rd respondent in Lr.GI.No.6271/99.2K&200-2001, dated 17-07-2002, seeking to recover the arrears of tax alleged to be due from the
4th respondent from the property of the petitioner without first proceeding against the 4th respondent and his property as illegal, arbitrary and unreasonable and grant such other just and consequential relief or reliefs.

Counsel for the Petitioner: Mr. V.V.L.N. Sarma

Counsel for the Respondents: G.P. for Taxes & Special S.C. for Commercial Taxes

The Court made the following :

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ORDER: (Per Hon'ble Sri Justice B. Sudershan Reddy)

The petitioner in this writ petition challenges the notice issued by the 3rd respondent in Lr. GI. No.6271/99.2K&2000-2001, dated 17-07-2002, directing the petitioner to pay the arrears of the tax purported to be payable by the 4th respondent to the 3rd respondent-Commercial Tax Department. This notice, according to the petitioner suffers from infirmities requiring interference of this

Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The petitioner is none other than the father of the 4th respondent. Admittedly, the 4th respondent is a registered dealer under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the APGST Act').

The 4th respondent was doing business in kirana items in the name and style of Nageswara Enterprises at Tadepalligudem. He applied for and obtained registration certificate from the Commercial Tax Department. Admittedly, the petitioner herein stood as surety undertaking to pay the taxes, if any, payable by the 4th respondent. Accordingly, the petitioner executed a surety bond. In the affidavit filed in support of the writ petition, it is stated that the petitioner accepted that in case of non-payment of tax by the 4th respondent, he shall be responsible for the action that may be taken by the Department and given liberty to the Department to proceed against the property offered by him as security.

The petitioner, accordingly, furnished the details of his house situated in Tadepalligudem SRO bearing No.105/39 in an extent of 55 square yards. The petitioner also submitted his National Savings Bond of Rs.10,000/-, dated 31-03-1993, as surety. It is evident from the impugned notice, dated 17-07-2002, itself, that the 4th respondent did not pay the tax for the year 1999-2000 and 2000-2001. The liability of the 4th respondent is fixed at Rs.13,79,385/- . The tax payable by the 4th respondent for the year 1999-2000 was Rs.2,27,146/- and for the year 2000-20001 was Rs.2,88,549/-. That a penalty of Rs.46,522/- was also imposed. The respondent herein required the petitioner to pay the above arrears within seven days from the date of receipt of the notice. In the impugned proceedings, it is clearly stated that when the 4th respondent obtained a registration certificate from the Commercial Tax Department, the petitioner stood as guarantor and filed an affidavit duly notarized offering his residential house in an extent of 55 square yards situated at Tadepalligudem SRO bearing No.105/39.

The petitioner challenges the legality and correctness of the impugned proceedings, dated 17-07-2004.

Sri V.V.L.N. Sarma, learned counsel for the petitioner, submits that the writ petitioner is not a defaulter within the meaning of Revenue Recovery Act and therefore no proceedings could have been initiated against him for realization of the arrears of tax payable by the 4th respondent. It is also submitted that the liability of the writ petitioner, if at all, is restricted to an amount equal to the tax payable under the APGST Act for a year and not more than that.

The facts are not in dispute. The 4th respondent with a view to get himself registered as a dealer submitted an application for registration to the registering authority in accordance with the rules known as Andhra Pradesh General Sales Tax Rules, 1957 (for short 'the APGST Rules').

The registering authority required the 4th respondent to furnish security as is required under sub-rule (8) of Rule 28 of the APGST Rules and in the process, the petitioner himself offered a property, those details are referred to hereinabove, as security for proper realization of the tax and other dues payable by the 4th respondent. Sub-rule (9) of Rule 28 of the APGST Rules provides that the security referred to in

sub-rule (8) of Rule 28 of the APGST Rules may be in any one of the following forms *viz.,* (a) Deposit in Government Treasury by cash; (b) Government promissory notes, loan bonds, post office savings bank deposits, National Savings Certificates, deposits made in the scheduled banks or Andrha Pradesh State Co-operative Bank or Central Cooperative Bank duly pledged to the registering authority; (c) Surety bond;

(d) Guarantee from a Scheduled Bank agreeing to pay to the State Government on demand the amount of security fixed by the registering authority; and (e) immovable property.

The petitioner has not only executed a surety bond but also furnished immovable property as surety.

We do not find any difficulty whatsoever to agree with the submission made by

the learned counsel for the petitioner that the liability of the guarantor/surety shall not exceed an amount equal to tax payable under the APGST Act for a year as estimated by the authority. Therefore, the respondents herein can proceed against the petitioner for realization of an amount equal to tax payable under the APGST Act for a year and not more than that.

In the instant case, the impugned notice directs the petitioner to pay the tax for the years 1999-2000 and 2000-2001 as well as penalty, which in our considered opinion, is impermissible in law. The respondent, in law, is entitled to proceed against the petitioner for realization of an amount equal to tax payable by the 4th respondent for a year as assessed by the authority but not more than that. No proceedings can be initiated against the petitioner for realization of whole of the amount due and payable by the 4th respondent, since the liability of the petitioner as a surety is restricted only for an amount equal to tax payable for a year as estimated by the authority. This point is accordingly answered in favour of the petitioner.

The petitioner having offered security and having executed a surety bond as required under the APGST Act and the Rules, cannot be permitted to turn round and contend that he is not a defaulter within the meaning of the provisions of the Revenue Recovery Act. The petitioner steps into the shoes of the 4th respondent, who is admittedly defaulter and is liable to pay the tax amount.

The decision reported in ***Kalimili Radhakrishnaiah v. Government of Andhra Pradesh*** has no application whatsoever to the facts situation on hand.

In the circumstances, we find no merit in the submission that the petitioner cannot be characterized as a defaulter.

Learned counsel for the petitioner further contends that the authorities, if at all, can proceed against the petitioner only in case the amount due from the 4th respondent could not be realized from out of the property of the 4th respondent. The contention is that the Department has to proceed first

against the 4th respondent and only thereafter against the petitioner. In support of the submission, learned counsel relied on the judgment of this Court in ***Urvashi Bar & Restaurant v. The Dy. Commercial Tax Officer & Tipsy Wines.*** The said decision in no manner supports the contention urged by the learned counsel for the petitioner. There is no ratio, as such, evident from the decision reported in ***Urvashi Bar & Restaurant's case (2 Supra)*** that the Department is required to proceed first against the dealer and only thereafter against the guarantor/surety.

Be that as it may, in the impugned order, itself, it is clearly stated that the Department is unable to recover any amount whatsoever from the 4th respondent. Obviously, only after exhausting the remedy available against the 4th respondent herein, the Department has decided to proceed against the petitioner.

In our considered opinion, the respondent did not commit any illegality in proceeding against the petitioner for realization of the arrears of tax payable by the 4th respondent. However, the respondent cannot proceed against the petitioner for realization of whole of the amount due and payable by the 4th respondent, since his liability is restricted only for an amount equal to tax payable under the APGST Act for a year as estimated by the authority.

Accordingly, the Writ Petition is partly allowed without any order as to costs.

However, it shall always be open to the petitioner to furnish the details of the property, if any, still held by the 4th respondent in order to enable the Department to proceed against the 4th respondent for realization of the arrears of tax and the information, if any, to be furnished by the petitioner herein shall duly be taken into consideration by the Department so as to proceed against the 4th respondent for realisation of the arrears.

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B. SUDERSHAN REDDY, J

Date:12-04-2005.

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C.V. RAMULU, J

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To

1) The Commissioner of Commercial Taxes
   Government of Andhra Pradesh, Hyderabad.

2) The District Commercial Tax Officer
West Godavari, Eluru.

3) The Commercial Tax Officer
Tadepalli Gudem, West Godavari Dist.

4) Two C.Cs. to G.P. for Taxes & Special S.C. for Commercial Taxes, High Court of A.P., Hyderabad (O.U.T.)

5) Two C.D. copies.